THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.1349 of 2006

Date of Decision: 29 - 8 - 2006

Bagh Singh **.....Petitioner**

v.

Karam Singh and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Ajay Tewari, Advocate
for the petitioner.

Mr.H.R.Nohria, Advocate
for the respondents.

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P.S.PATWALIA, J. (Oral)

The present revision petition has been filed against orders dated 27.8.2005 and 6.2.2006 vide which an application under Order XXXIX Rules 1 and 2 CPC filed by the petitioner, plaintiff in the suit, restraining the defendants from alienating/mortgaging the suit property or from dispossessing the petitioner from the disputed property was dismissed and an appeal filed against the said order was also dismissed by the learned District Judge, Sangrur.

After going through the facts of the case, it is apparent that the plaintiff had executed sale deeds dated 3.1.1995 and 4.1.1995 vide which the suit property was sold by him to the defendants. It is now his case that the said sale deeds were the result of fraud practised on him. However, the facts of the case would show that the sale deeds are registered sale deeds. Learned counsel for the respondents also states that the entire sale consideration was paid in the presence

of the Sub Registrar. The sale deeds recite that possession of the property was handed over to the respondents.

The plaintiff has filed the present suit through his attorney who is his son Mithu Singh. A reading of the order of the trial Court would show that relationship between the plaintiff and his wife were strained. While the plaintiff was residing at Village Dhandra, his wife and Mithu Singh were residing at Village Badshahpur. Mithu Singh was brought up at Village Badshahpur and his marriage was solemnized there. It is also the case of the respondents that he was not having good relations with Bagh Singh. It is the further case of the defendants that they have been in possession of the suit property right from 1995 onwards but mutation was not sanctioned in their favour because the plaintiff had availed a loan by mortgaging a portion of the disputed property with the Bank. The trial Court has declined the application filed by the plaintiff on the following reasoning:-

> "12. The contention of the ld. counsel for the defendants that there was no loves lost between Bagh Singh and Mithu Singh finds corporation from the affidavit executed by Bagh Singh, wherein he stated that his son Mithu Singh is allured by the bad elements and in the said affidavit that he is realizing threats to his life from Mithu Singh. The said affidavit was executed on 7.1.1995. There is one application moved by Mithu Singh to SHO, Dhuri, wherein he stated that he has brought his father Bagh Singh to village Badshahpur on 8-2-2005 and he will be responsible for any loss caused to his father.
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> 13. No doubt, mutation was not sanctioned regarding the disputed property in favour of the defendants and vide note Nos.1705 and 1706 and 1707, in the jamabandi, the request for mutation was declined by the concerned authorities. Albeit in the jamabandi for the year 1998-99 and Khasra girdawari, the plaintiff Bagh Singh has been depicted as owner in possession, but the presumption attached

> to the entries in the jamabandi is rebuttable one. From the plethora of documents placed on the file by the defendants, it is proved on the file that the disputed property was purchased by the defendants, vide three sale deeds dated 3.1.1995 and 4.1.1995. The defendants have been in possession over the disputed property, since its purchase from the plaintiff, for the last more than 10 years."

These findings have been affirmed in appeal by the learned District Judge, Sangrur.

At the time of arguments,learned counsel for the petitioner contended that the allegation of the respondents that they were in possession cannot be true for the reason that firstly in the revenue record the plaintiff is shown to be in possession of the property. Secondly in the suit filed by the Bank which was decreed by the trial Court, the respondents made no efforts to get themselves impleaded. Thirdly even in the appeal filed by the Bank claiming enhanced rate of interest, they have not got themselves impleaded. Fourthly when the sale deeds were executed no reason was mentioned therein as to why the plaintiff was selling the land.

After hearing learned counsel for the petitioner, I find it difficult to agree with him. At this stage only a prima facie case is to be seen to decide the matter of interim injunction. Prima facie there is an averment in the sale deeds that possession has been delivered to the defendants. Still further, the Courts have found on examination of the documents that defendants are in possession of the land. One also cannot lose sight of the fact that this suit was filed by the plaintiff admittedly an illiterate and aged person through his son Mithu Singh against whom it is established that he had no love and affection and who was staying in a separate village with his mother for the last three decades. On the other hand the plaintiff is residing in the same village as the defendants who are his real nephews.

For the reasons aforementioned, I do not find any ground to interfere

in the orders made by the Courts below in so far as the claim of the defendants regarding possession of the suit property is concerned. However, at the same time, I am of the opinion that the interest of the plaintiff to the extent that the respondents should be restrained from alienating the suit property during the pendency of the suit is to be protected. Learned counsel for the respondents states that his clients would not alienate the suit property till the matter is finally decided by the trial Court.

The revision petition is disposed of in the aforementioned terms.

(P.S.PATWALIA)
JUDGE

August 29, 2006.

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